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EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 5.8.2011.

BILL NO. 27 OF 2011

A Bill to consolidate and amend the law relating to acquisition of land for public purposes.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Land Acquisition Act, 2011.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires,—

(a) the expression “appropriate Government” means,—

(i) in relation to acquisition of land for the purposes of the Union, the Central Government;

Short title,
extent and
commencement.

Definitions.

(ii) in relation to acquisition of land for the purposes of any infrastructure project in more than one State, the Central Government; and

(iii) in relation to acquisition of land for any other purpose, the State Government;

(b) the expression "Authority" means the Land Acquisition Compensation Disputes Settlement Authority established by the State Government under sub-section (1) of section 24;

(c) the expression "Authority for the Centre" means the Land Acquisition Compensation Disputes Settlement Authority for the Centre established by the Central Government under sub-section (1) of section 35;

(d) the expression "Collector" means any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act;

(e) the expression "corporation owned or controlled by the State" means any body corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in section 617 of the Companies Act, 1956;

1 of 1956.

(f) the expression "cost of acquisition" includes—

(i) compensation awarded including the solatium and other amount and interest payable thereupon;

(ii) demurrage to be paid for damages caused to the land and standing crops in the process of acquisition;

(iii) cost of acquisition of out-project land for settlement of displaced or adversely affected families;

(iv) cost of development of infrastructure and amenities at resettlement sites;

(v) additional cost of resettlement as may be required after admissible adjustment of rehabilitation and resettlement cost against compensation awarded to affected persons or families;

(vi) administrative cost of acquisition of land including both in-project and out-project areas lands; and

(vii) administrative cost involved in planning and implementation of resettlement and rehabilitation packages for providing physical rehabilitation and resettlement to the entitled and interested families, displaced or adversely affected on account of in-project acquisition of land;

(g) the expression "Court" means a principal Civil Court of original jurisdiction unless, the appropriate Government has appointed a special judicial officer within any specified local limits to perform functions of the Court under this Act;

(h) the following persons shall be deemed person "entitled to act" as and to the extent hereinafter provided (that is to say) —

trustees for other persons beneficially interested shall be deemed the person entitled to act with reference to any such case, and that to the same extent as the person beneficially interested could have acted if free from disability;

a married woman in cases to which the English law is applicable shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics shall be deemed respectively the persons so entitled to act, to the same extent as the minors or lunatics themselves, if free from disability, could have acted:

Provided that—

(i) no person shall be deemed “entitled to act” whose interest in the subject matter shall be shown to the satisfaction of the Collector or the Authority for the Centre or, as the case may be, the Authority to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every such case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or the Authority for the Centre or, as the case may be, the Authority shall appoint a guardian for the case to act on his behalf in the conduct thereof;

5 of 1908.

(iii) the provisions of Order XXXII of the First Schedule to the Code of Civil Procedure, 1908 shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Authority, by a next friend, or by a guardian for the case, in proceedings under this Act; and

(iv) no person “entitled to act” shall be competent to receive the compensation money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase money on a voluntary sale;

(i) the expression “infrastructure project” shall include,—

(i) any project relating to generation, transmission or supply of electricity;

(ii) construction of roads, highways, bridges, airports, ports, rail systems or mining activities;

(iii) water supply project, irrigation project, sanitation and sewerage system; or

(iv) any other public facility as may be notified in this regard by the Central Government in the Official Gazette;

(j) the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(k) the expression “local authority” includes a town planning authority, by whatever name called, set up under any law for the time being in force;

(l) the expression “member” means a Member of the Authority for the Centre, or as the case may be, the Authority, and includes the Chairperson;

(m) the expression “persons interested” includes,—

(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

(ii) tribals and other traditional forest dwellers, who have lost any traditional rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;

2 of 2007.

(iii) a person interested in an easement affecting the land; and

(iv) persons having tenancy rights under the relevant State laws;

(n) the expression “public purpose” includes,—

(i) the provision of land for strategic purposes relating to naval, military and air force works or any other work vital to the State, which are owned and funded out of State Exchequer to the tune of minimum fifty one per cent. of the total project cost;

(ii) the provision of land for infrastructure projects of the appropriate Government, where the benefits accrue to the general public; and such infrastructure project must be owned and funded out of the State Exchequer to the tune of minimum fifty one per cent. of the total project cost;

(iii) the provision of land for any other purpose useful to the general public, and necessary for planned development for which land has been purchased by a person under

lawful contract to the extent of eighty five per cent. but the remaining fifteen per cent. of the total area of land required for removing hurdles in completion of the project.

Explanation.—The word “person” shall include any company or association or body of individuals, whether incorporated or not.

Mandatory
social impact
assessment
prior to
acquisition of
land under this
Act.

3. Whenever the appropriate Government intends to acquire land for public purpose involving physical displacement of—

(i) one hundred or more families *en masse* in plain area; or

(ii) twenty five or more families *en masse* in tribal or hilly areas or Desert Development Programme blocks or areas specified in Fifth Schedule or Sixth Schedule to the Constitution, a social impact assessment study shall be carried out in the affected area for the purpose of social impact appraisal, incorporation of Tribal Development Plan, plan for giving emphasis for the Scheduled Castes, the Scheduled Tribes and other vulnerable sections of the society, provision for infrastructural amenities and facilities in the proposed resettlement area in such manner and within such time as may be prescribed by rules made by the Central Government.

PART II

ACQUISITION

Preliminary investigation

Publication of
preliminary
notification
and power of
officers
thereupon.

4. (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and, except in cases of land to which by virtue of the direction of the State Government under sub-section (6) of section 22, the provisions of the section 6 shall not apply, the Collector shall issue notice to all persons interested in the land as defined under section 2(m), to appear personally or by agent before him at the place and time mentioned therein, within a period of thirty days, after the date of publication of the notice, and to submit objection to the acquisition of the land notified under this sub-section and the Collector shall also cause public notice of the substance of such notification to be given at convenient places in the said locality, the last of the dates of such publication and the giving of such public notice and notice to the persons interested, being hereinafter referred to as the date of the publication of the notification:

Provided that where no declaration is made consequent upon the issue of a notification under sub-section (1) within the time-limit specified in sub-section (1) of section 7, no fresh notification under this sub-section shall, subsequent to the expiry of the period aforesaid, be made for a period of one year in respect of the same land:

Provided further that in case a notification issued under sub-section (1) in respect of a particular land lapsed for the second time, no proceeding under sub-section (1) shall be initiated at least for a period of five years from the date of such notification.

(2) After issuance of notice under sub-section (1), the Collector shall, before issue of declaration under section 7, undertake and complete the exercise of updating of land records, classification of land and its tenure, survey and standardization of land and property values in respect of the land under acquisition, together with finalization of the survey and such scheme of Rehabilitation and Resettlement as may be prescribed by the Central Government.

(3) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

Payment for damage.

Objections

6. (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

Hearing of objections.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him for the decision of that Government within a maximum period of sixty days from the last date of filing of objections under sub-section (1) and the decision of the appropriate Government on the objections shall be final:

Provided that the appropriate Government shall take a final decision in this regard within a maximum period of thirty days from the date of making of report by the Collector.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

(4) The appropriate Government shall appoint a fulltime officer to exercise the powers of collector and such appointed officer would not discharge any other duties except such duties as are provided under the provisions of this Act.

Declaration of intended acquisition

7. (1) When the appropriate Government is satisfied, after considering the report, if any, made under section 6, sub-section (2), that any particular land is needed for a public purpose, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 6, sub-section (2):

Declaration that land is required for a public purpose.

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),—

(i) published after the commencement of the Land Acquisition (Amendment) Act, 1984 but before the commencement of the Land Acquisition Act, 2011 shall be

made after the expiry of one year from the date of the publication of the notification;

(ii) Published after the commencement of the Land Acquisition Act, 2011 shall be made after the expiry of one year from the date of the publication of the notification.

Explanation 1.— In computing any of the periods referred to in the proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.— Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality, the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration, and such declaration shall state the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and, where a plan is to be made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter provided.

8. Whenever any land is so declared to be needed for public purpose, the appropriate Government, or some officer authorized by the appropriate Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

After
declaration,
Collector to
take order for
acquisition.

Land to be
marked out,
measured and
planned.

9. (1) The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out and measured, and if no plan has been made thereof, a plan shall be made of the same.

(2) The damages caused while carrying out works on land such as survey, digging or boring sub-soil, marking boundaries or cutting trenches or clearing away any standing crop, fence or forest or doing such other acts or things which may cause damages while acting under section 4 particularly relating to land which is excluded from acquisition proceeding, shall be evaluated and compensation shall be paid to the persons having interest in that land, within six months from the completion of the said works.

10. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations for all interests in such land may be made to him.

Notice to
persons
interested.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than thirty days after the date of publication of the notice) and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections, if any to the measurements made under section 9 and the Collector may, in any case, require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situated.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence,

6 of 1898.

address or place of business and registered under sections 28 and 29 of the Indian Post Office Act, 1898.

11. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than thirty days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for three years next preceding the date of the statement.

Power to require and enforce the making of statements as to names and interests.

45 of 1860.

(2) Every person required to make or deliver a statement under this section or section 10 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

12. (1) On the day so fixed or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection, if any, which any person interested has stated pursuant to a notice given under section 10 to the measurements made under section 9, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of—

Enquiry and award by Collector.

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf.

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, made an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

16 of 1908.

(4) Notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (2) shall be liable to registration under that Act.

13. The Collector shall make an award under section 12 within a period of one year from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Period within which an award shall be made.

Provided that in a case where the said declaration has been published before the commencement of this Act, the award shall be made within a period of one year from such commencement:

Provided further that the Collector may, after the expiry of the period of limitation, if he is satisfied that the delay has been caused due to unavoidable circumstances, and for the reasons to be recorded in writing, he may make the award within an extended period of six months:

Provided also that where an award is made within the extended period, the entitled person shall, in the interest of justice, be paid an additional compensation for the delay in making of the award, every month for the period so extended, at the rate of not less than five per cent. of the value of the award, for each month of such delay.

Criteria for
determination
of market
value of the
land.

14. (1) The Collector shall adopt the following criteria in assessing and determining the market value of the land,—

(i) the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds in the area, where the land is situated; or 2 of 1899.

(ii) The highest sale price for similar type of land situated in the village or vicinity ascertained from the sale prices of transactions within preceding one year period from the date of notification under section 4.

(2) Where the provisions of sub-section (1) are not applicable for the reason that:

(i) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(ii) the registered sale deeds for similar land as mentioned in clause (i) of sub-section (1) are not available for the preceding one year; or

(iii) the minimum land value has not been specified under the Indian Stamp Act, 1899 by the appropriate authority, 2 of 1899.

the concerned State Government shall specify the floor price per unit area of the said land based on the highest prices paid for similar type of land situated in the adjoining areas or vicinity, ascertained from the sale deeds registered during the preceding one year where highest price has been paid, and the Collector may calculate the value of the land accordingly.

(3) The Collector shall, before assessing and determining the market value of the land being acquired under this Act,—

(a) ascertain the intended land use category of such land; and

(b) take into account the value of the land of the intended category in the adjoining areas or vicinity,

for the purpose of determination of the market value of the land being acquired.

(4) In determining the market value of the building and other immovable property or assets attached to the land or buildings which are to be acquired, the Collector may use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by the Collector.

(5) The Collector may, for the purpose of determining the value of trees and plants, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(6) For the purpose of assessing the value of the standing crops damaged during the process of land acquisition proceedings, the Collector may utilize the services of experienced persons in the field of agriculture as he considers necessary.

Award of
Collector
when to be
final.

15. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

(3) The Collector shall keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the amount of compensation awarded to each individual along with details of the land finally acquired under this Act.

(4) For the purposes of sub-section (3), the summary of the entire proceedings shall include the summary of schedule for payment of compensation; dates of taking possession of the land and such other information as may be prescribed.

(5) It shall be the duty of the Collector to ensure that physical possession of the land is taken over and the amount of compensation is paid within a period of sixty days commencing from the date of the award.

(6) When amount of compensation is not being paid to the interested person within sixty days as aforesaid, unless prevented by one or more of such contingencies as provided in section 51 of this Act, the entitled person shall, in the interest of justice, be paid an additional compensation for every month for the period so delayed, at the rate of not less than five per cent. of the value of the award, for each month of such delay.

(7) The possession of the land acquired shall not be taken unless the compensation due under this Act is paid in full or is tendered to the entitled person.

16. The Collector may, for any cause he thinks fit, from time to time, adjourn the enquiry to a later date to be fixed by him.

Adjournment
of enquiry.

17. (1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 23 to make a reference to the Authority, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:

Correction of
clerical errors,
etc.

Provided that no correction, which is likely to affect prejudicially any person, shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue.

18. For the purpose of enquiries under this Act, the Collector shall have powers to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and, in the same manner as is provided in the Code of Civil Procedure, 1908.

Power to
summon and
enforce
attendance of
witnesses and
production of
documents.

19. In determining the amount of compensation, the collector shall be guided by the provisions contained in sections 14, 41 and 42.

Matters to be
considered and
neglected.

20. The appropriate Government may at any time before the award is made by the Collector under section 12 call for any record of any proceedings whether by way of inquiry or otherwise for the purpose of satisfying itself as to the legality or propriety of any findings or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit:

Power to call
for records,
etc.

Provided that the appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard.

Taking Possession

21. When the Collector has made an award under section 12, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Power to take
possession.

22. (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made may, on the expiration of thirty days from

Special powers
in case of
urgency.

the publication of the notice mentioned in section 10, sub-section (1) take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or Ghat station, or of providing convenient connection with or accesses to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-section the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees, if any on such land and from any other damage sustained by them caused by such sudden dispossession and not excepted in section 42; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),—

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 51, sub-section (2), and where collector is so prevented, the provisions of section 51, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(5) The amount paid or deposited under sub-section (4), shall be taken into account for determining the amount of compensation required to be tendered under section 51, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 12, the excess may unless refunded within three months from the date of Collector's award, be recovered as an arrear of land revenue.

(6) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 6 shall not apply, and, if it does so direct, a declaration may be made under section 7 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1).

(7) Without prejudice to the provisions of sub-section (3) and sub-section (4), an additional compensation of one hundred percent of the market value as determined under section 14, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) and sub-section (2).

PART III

REFERENCE TO AUTHORITY AND PROCEDURE THEREON

Reference to
Authority.

23. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the

determination of the Authority, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of fifteen days from the date of receipt of application, make a reference to the Authority for the Centre, or as the case may be, the Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority for the Centre, or as the case may be, the Authority, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 15, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.

PART IV

ESTABLISHMENT OF THE STATE AUTHORITY

24. (1) The State Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition compensation, establish, by notification in the Official Gazette, an Authority for the State to be known as the (name of the State) Land Acquisition Compensation Disputes Settlement Authority to exercise the jurisdiction, powers and authority conferred on it by or under this Act with regard to acquisition of land by the State Government:

Establishment
of Land
Acquisition
Compensation
Disputes
Settlement
Authority.

Provided that a State Government may constitute more than one Authority or the benches thereof, for the purposes of this Act, if it considers necessary.

(2) The head office of the Authority shall be at such place as the State Government may, by notification, in the Official Gazette, specify.

(3) The Authority shall consist of not less than three Members, including the Chairperson and Member Secretary to be appointed by the State Government.

(4) The Members of the Authority shall be persons of ability, integrity and standing who have adequate knowledge of matters relating to land acquisition, public administration, finance, economics and law.

(5) A person shall not be qualified to be a Member of the Authority unless he is or has been—

(i) a retired judge of a High Court;

(ii) an officer of the State Government not below the rank of District Collector;

(iii) any person having adequate knowledge and experience in the matters relating to land acquisition, agriculture, community service and belonging to the area of jurisdiction of the Authority:

Provided that a person shall not be qualified to be a member unless he has obtained a Bachelor's Degree in law or an equivalent Degree and has attained a minimum age of fifty years on the date of such appointment.

(6) The Members of the Authority shall not hold any other office.

(7) The Authority shall ensure transparency while exercising its powers and discharging its functions.

Term of
office and
conditions of
service of
Members.

25. (1) A Member shall hold office for a term of five years from the date he enters upon his office:

Provided that the Member shall not be eligible for reappointment in the same capacity in that Authority in which he had earlier held the office:

Provided further that no Member shall hold office as such after he has attained the age of sixty-seven years.

(2) A Member of the Authority may, by notice in writing under his hand addressed to the State Government, resign his office:

Provided that the Member shall, unless he is permitted by the State Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(3) The salary, allowances and other terms and conditions of service of the Members shall be such as may be prescribed by the State Government:

Provided that the salary, allowances and other terms and conditions of service of the Members, shall not be varied to their disadvantage after appointment.

Removal of
Member.

26. (1) No Member shall be removed from office except in accordance with the provisions of this section.

(2) The State Government may by order remove from office any Member, if he—

(a) has been adjudged an insolvent;

(b) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude;

(c) has become physically or mentally incapable of acting as a Member;

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member;

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has been guilty of proved misbehaviour.

(3) No person shall be removed under this section until that persons has been given an opportunity of being heard in the matter.

Officers and
employees of
Authority.

27. (1) The State Government may specify the numbers, nature and categories of the officers and employees of the Authority.

(2) The salaries and allowances payable to, and other terms and conditions of service of, the officers and employees of the Authority shall be such as may be prescribed by the State Government.

Proceedings
of Authority.

28. The Authority shall have its sittings at the head office or any other place and at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business in its sittings as it may specify.

Filling of a
casual
vacancy.

29. A casual vacancy in the office of a Member of the Authority shall be filled by the State Government, by notification in the Official Gazette, as soon as may be, after the occurrence of the vacancy.

Powers of
Authority.

30. (1) The Authority shall, for the purposes of the settlement of disputes relating to land acquisition compensation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed;

(2) The Authority shall have the powers to pass such interim order in any proceeding, hearing or matter before it as it may consider appropriate.

45 of 1860. 2 of 1974. **31.** All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Authority shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Proceedings before Authority.

32. The applications relating to settlement of land acquisition compensation under this Act shall be decided by the Authority as expeditiously as possible and endeavour shall be made by it to dispose of the disputes finally within a period of six months from the date of receipt of the reference under section 23.

Speedy disposal of disputes by Authority.

45 of 1860. **33.** The Members and officers of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members and officers of Authority to be public servants.

34. No civil court shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter.

Jurisdiction of civil courts barred.

PART V

ESTABLISHMENT OF THE AUTHORITY FOR THE CENTRE

35. (1) The Central Government may, for the purpose of providing speedy disposal of disputes relating to land acquisition compensation, by notification, in the Official Gazette, establish one or more Authority to be known as the Land Acquisition Compensation Disputes Settlement Authority for the Centre to exercise jurisdiction, powers and authority conferred on it by or under this Act with regard to the acquisition of land by the Central Government.

Establishment of Land Acquisition Compensation Disputes Settlement Authority for the Centre.

(2) The Central Government shall specify in the notification referred to in sub-section (1) the matters and places in relation to which the Authority for the Centre may exercise jurisdiction.

(3) The Authority for the Centre shall consist of a Chairperson and not less than two Members to be appointed by the Central Government.

(4) A person shall not be qualified to be a Member of the Authority for the Centre unless he,—

(i) is or has been a Judge of a High Court; or

(ii) is a person who is or has been a member of the Indian Administrative Service having sufficient knowledge of land acquisition and has held the post of Collector of a district and a post equivalent to a Joint Secretary in the Government of India; or

(iii) is a person having adequate knowledge and experiences in the matters relating to land acquisition, agricultural and community services:

Provided that no appointment of a sitting Judge under clause (i) shall be made except after consultation with the Chief Justice of the High Court concerned:

Provided further that no appointment of a person under clause (iii) shall be made unless he has obtained a bachelor degree in law or an equivalent degree and has attained a minimum age of fifty years on the date of such appointment.

(5) The Authority for the Centre shall have a Secretariat consisting of a Secretary-General and such other staff as may be decided by the Central Government.

Application of certain provisions relating to Authority for compensation disputes settlement to Authority for the Centre.

36. The provisions of sections 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 shall apply to the Authority for the Centre and shall have effect, subject to the following modifications, namely:—

(a) references to “Authority” shall be construed as references to “Authority for the Centre”;

(b) references to “State Government” shall be construed as references to “Central Government”; and

(c) for the reference “any Member” in sub-section (2) of section 26, the reference “any Member except a sitting Judge of a High Court” shall be substituted.

Collector’s statement to the authority.

37. (1) In making the reference, the Collector shall state for the information of the Authority, in writing under his hand—

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 22, or either of them, and the amount of compensation awarded under section 12;

(d) the amount paid or deposited under sub-section (4) of section 22; and

(e) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested respectively.

Service of notice.

38. The Authority shall thereupon cause a notice specifying the day on which the Authority will proceed to determine the objection, and directing their appearance before the Authority on that day, to be served on the following persons, namely:—

(a) the applicant;

(b) all persons interested in the objection, except such, if any, of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

Restriction on scope of proceedings.

39. The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interest of the persons affected by the objection.

Proceedings to be in open hearings of the Authority.

40. Every such proceeding shall take place in open hearing of the Authority, and all persons entitled to practice in any Civil Court in the State shall be entitled to appear, plead and act, as the case may be, in such proceeding.

Matters to be considered on determining compensation.

41. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Authority shall take into consideration—

first, the market-value of the land in the terms of section 14 on the date of the publication of the notification under section 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops, trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage, if any sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage, if any, sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and

sixthly, the damage, if any *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 7 and the time of the Collector's taking possession of the land.

(2) in addition to the market value of the land, as above provided, the Authority shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation— In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Authority shall be excluded.

(3) In addition to the market value of the land as above provided, the Authority shall in every case award a sum of sixty per cent. on such market value, in consideration of the compulsory nature of the acquisition.

42. The Authority shall not take into consideration—

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 7, by or in consequence of the use to which it will be put;

fifthly, any outlay or improvements on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section 4, sub-section (1); or

sixthly, any increase to the value of the land on account of its being put to any use, which is forbidden by law or opposed to public policy.

43. The amount of compensation awarded by the Authority shall not be less than the amount awarded by the Collector under section 12.

Matters to be neglected in determining compensation.

Amount of compensation awarded by Authority not to be lower than the amount awarded by the Collector.

44. (1) Every award under this part shall be in writing signed by all the members of the Authority having jurisdiction and shall specify the amount awarded under clause first of sub-section (1) of section 41, and also the amounts, if any, respectively awarded under

Forms of awards.

each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure 1908.

5 of 1908.

Costs.

45. (1) Every such award shall also state the amount of costs incurred in the proceeding under this Part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the cost shall ordinarily be paid by the Collector, unless the Authority is of the opinion that the claim of the applicant is so extravagant or that he is so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

Collector may be directed to pay interest on excess compensation.

46. If the sum, which in the opinion of the Authority the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Authority may direct that the collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Authority:

Provided that the award of the Authority may also direct that where such excess or any part thereof is paid into Authority after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Authority before the date of such expiry.

Re-determination of the amount of compensation on the basis of the award of the Authority.

47. (1) Wherein an award under this part, the authority allows to the applicant any amount of compensation in excess of the amount awarded by the collector under section 12, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 23, by written application to the Collector within three months from the date of the award of the Authority require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Authority:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority and the provisions of sections 23 to 46 shall, so far as may be, apply to such reference as they apply to a reference under section 23.

Determination of amount of compensation in pending or unsettled cases.

48. Where an award is pending or remains unsettled at any stage prior to the coming into force of this Act then the amount of compensation payable to the entitled person may be determined on the basis of section 14 of this Act.

PART VI

APPORTIONMENT OF COMPENSATION

Particulars of apportionment to be specified.

49. When there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

50. When the amount of compensation has been settled under section 12, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Authority.

Dispute as to apportionment.

PART VII

PAYMENT

51. (1) On making an award under section 12, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

Payment of compensation or deposit of same in Authority.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under section 23 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 23:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

52. (1) If any money is deposited in Authority under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Authority shall direct the payment of the interest in terms of section 53 to the person or persons who would for the time being have been entitled to the possession of the said land, from the date of possession until it shall have been so paid.

Investment of money deposited in respect of lands belonging to person incompetent to alienate.

(2) In all cases of money deposited to which this section applies, the Authority shall order the payment by the Collector of the costs of the orders for the payment of the interest and for the payment out of Authority of the principal of such moneys, including therein all reasonable charges and expenses incident thereon.

53. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Payment of interest.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

PART VIII

TEMPORARY OCCUPATION OF LAND

54. (1) Whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, the appropriate Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

Temporary occupation of waste or arable land.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials, if any, to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons, respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the authority.

Power to enter and take possession and compensation on restoration.

55. (1) On payment of such compensation, or on executing such agreement, or on making a reference under section 54, the collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage, if any, done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose.

Difference as to condition of land.

56. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Authority.

PART IX

MISCELLANEOUS

Service of notices.

57. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Authority.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the building housing the authority, and also in some conspicuous part of the land to be acquired:

Provided that if the Collector or the Authority so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under sections 28 and 29 of the Indian Post Office Act, 1898, and service of it may be proved by the production of the addressee's receipt.

6 of 1898.

Penalty for obstructing acquisition of land.

58. Whoever willfully obstructs any person in doing any of the acts authorized by section 4 or section 9, or willfully fills up, destroys, damages or displaces any trench or mark made under section 5, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding one month, or with fine not exceeding five thousand rupees, or both.

Magistrate to enforce surrender.

59. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate or to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the surrender of the land to the Collector.

60. (1) Except in the case provided for in section 55, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

(2) Whenever the Government withdraws from any such acquisition or the Collector does not make an award under section 12 within a period of one year from the date of publication of declaration under section 7 of this Act or within a period of one year from the commencement of this Act, in cases of declaration published under section 6 of the Land Acquisition Act, 1894, as the case may be, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

61. (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired:

Acquisition of part of house or building.

Provided that if any question arises as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Authority and shall not take possession of such land until after the question has been determined:

Provided also that in deciding on such a reference, the Authority shall have due regard to the question whether the land proposed to be taken, is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 41, sub-section (1), thirdly, by a person interested, on account of the severing of the land to be acquired from his other land, the appropriate Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 7 to 11, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the appropriate Government to the person interested, and shall thereafter proceed to make his award under section 12.

62. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority, the charges of and incidental to such acquisition shall be defrayed from or by such fund.

Acquisition of land at cost of a local authority.

(2) In any proceeding held before a Collector or Authority in such cases the local authority concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority shall be entitled to demand a reference under section 23.

63. No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption from stamp duty and fees.

64. In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908, including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

Acceptance of certified copy as evidence.

65. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

Notice in case of suits for anything done in pursuance of Act.

Code of Civil Procedure to apply to proceedings before Authority.

66. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Authority under this Act. 5 of 1908

Appeals in proceedings before Court.

67. Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Authority and from any decree of the High Court passed on such appeal as aforesaid, an appeal shall lie to the Supreme Court subject to the provisions contained in section 109 of the Code of Civil Procedure, 1908, and in Order XLV thereof. 5 of 1908.

Utilization of land for the purpose it is acquired.

68. (1) The land acquired under this Act shall not be transferred to any other purpose except for a public purpose, and after obtaining the prior approval of the appropriate Government.

(2) When any land or part thereof, acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the same shall return to the erstwhile owner or owners of the land on payment of compensation received.

(3) An application together with the proof of deposit of compensation received under sub-section (2) shall be filed before the Collector within a period of one year from the date of expiring of period of five years referred to in sub-section (2):

Provided that after receiving such application the Collector shall ensure the reversal of title and possession to the erstwhile owner within a period of six month from the date of receipt of such application.

Sharing of difference of cost of acquisition and consideration received by transfer of the land.

69. Whenever any land acquired under this Act is transferred to any person for a consideration, eighty per cent. of the difference in the acquisition cost and the consideration received, which in no case shall be less than the acquisition cost, shall be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired, and for the purpose, a separate fund may be maintained which shall be administered by the Collector in such manner as may be prescribed.

Repeal and savings.

70. (1) The land Acquisition Act, 1894, is hereby repealed.

(2) Notwithstanding the repeal of the land Acquisition Act, 1894, anything done or any action taken under the said Act shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

Power to make rules.

71. (1) The appropriate Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

STATEMENT OF OBJECTS AND REASONS

The 'Land Acquisition Act' was enacted by the British in the year 1894 with the express purpose of compulsory acquisition of privately held property/land by the State. After independence in 1947, the Government of India adopted the Land Acquisition Act of 1894 as a tool for regulating land acquisition. Though various amendments have been made to the Act from time to time, the administrative procedure and the parameters for determining the compensation still remain almost the same. The owner of the property has no bargaining power with the State in such circumstances nor does he have any say in the process of determination of compensation.

The definition of "public purpose" under the Act has been so inclusive and ambiguous that anything and everything can be acquired under this heading for any purpose. The instances of acquisition of private land by the Central Government and various State Governments for the activities carried on by private individuals or by the public authorities for a distinct profit motive are not uncommon. If any land is acquired for making bridges, hospitals or other buildings for public use, then it can be called 'public purpose'. But if the land is handed over to private parties to develop plots, golf courses, buildings, etc. for profit, it cannot be called public purpose.

The very basis of determining compensation is flawed since it is titled against the interest of the landowner to fix the compensation on the lower side. Since the compensation fixed is always significantly lower than its potential value, there has always been the tendency to acquire land and to use the same to make profits by allotting to the private individuals or public authorities. While determining compensation, the purpose of acquisition is never taken into consideration. In almost all cases of land acquisition in the past, the compensation awarded has been found grossly inadequate and the issues relating to inadequate compensation have given rise to serious problems of law and order and in large number of cases leading to loss of life and property. Inadequate compensation compels the farmer to approach judicial forums, which puts him under costly, prolonged, and unending litigation. Delays in awarding compensation are also a common feature, which not only have led to loss of livelihood but also immense economic burdens and mental agony to the affected families.

India is a country of 1.2 billion people and food and livelihood security for all is of paramount importance. The indiscriminate acquisition of vast tracts of most fertile land adversely affect the food security. The Land Acquisition Act, 1894 does not take into account such concerns. In the name of urgency, millions of farmers have been arbitrarily deprived of their land since independence for the execution of so called urgent projects though, in some cases it took decades to initiate work on these projects on the acquired land.

The focus on inclusive growth models and a desired growth in agriculture has come to the fore with the emergence of inflation and food security as major challenges before the nation. As in an equitable society there is no sanctity and primacy of private interest over the general interest of the community, this must be reflected in the laws of the land. It is, therefore, suggested that the Land Acquisition Act, 1894 has lived its life and deserves to be immediately repealed. The 1894 Act must be substituted by a more pragmatic, progressive, unambiguous and comprehensive law wherein the acquisition must pass the scrutiny of the test of real public purpose which is founded on the doctrine of superior claims of whole community and not for making profit by the private individuals or public authorities. The proposed law must provide clear and consistent compensation rules and the State at the time of acquiring land must also take into consideration the purpose of acquisition while

fixing quantum of compensation. The Bill seeks to protect our fertile agricultural land resource and the interests of the landowners to enable growth in agriculture, ensure food and livelihood security and sustainable development.

NEW DELHI;
April 26, 2010.

JAYANT CHAUDHARY

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117(1), 274(1) AND 117(3) OF
THE CONSTITUTION

[Copy of letter No. 1105/07/2010-LRD dated 14th March, 2011 from Shri Vilasrao Deshmukh, Minister of Rural Development and Minister of Panchyati Raj to the Secretary-General, Lok Sabha].

The President, having been informed of the subject matter of the land Acquisition Bill, 2011 by Shri Jayant Chaudhary, M.P., recommends its introduction under articles 117(1) and 274(1) and consideration under article 117(3) of the Constitution in Lok Sabha.

FINANCIAL MEMORANDUM

Clause 5 provides for payment for damages by the officer so authorized by the appropriate Government. Clause 24 provides for the establishment of Land Acquisition Compensation Disputes Settlement Authority for providing speedy disposal of disputes relating to land acquisition and compensation. Clause 35 of the Bill provides that the Central Government shall, by notification, establish one or more authorities to be known as the Land Acquisition compensation disputes settlement Authority to exercise jurisdiction, powers and authority conferred on it by or under this Act with regard to the acquisition of land by the Central Government, for the purpose of providing speedy disposal of disputes relating to land acquisition compensation. Clause 46 provides that the Authority may direct the Collector to pay interest in case the compensation awarded was less than what should have been awarded. Clause 51 provides for payment of compensation to the persons interested. Clause 53 provides for payment of interest on compensation amount in such cases where possession of land was undertaken before payment of compensation. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. The expenditure relating to States shall be borne out of the Consolidated Funds of the respective States while the expenditure relating to Union territories shall be borne out of the Consolidated Fund of India.

The exact expenditure, which will be involved under the proposed Bill, will depend upon the composition of the above mentioned Authority, which will be decided after the Bill is passed. Hence, it is not practicable to make an exact estimate of the recurring and non-recurring expenditure for the purpose at this stage. However, it is likely to involve a recurring expenditure of about rupees three hundred crore. A non-recurring expenditure of about rupees four hundred and fifty crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 71 of the Bill empowers the appropriate Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

BILL NO. 15 OF 2011

A Bill to provide for abolition of capital punishment in India.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. This Act may be called the Abolition of Capital Punishment Act, 2011.

Short title.

2. (1) Capital punishment is hereby abolished.

Abolition of
capital
punishment.

45 of 1860.

(2) Notwithstanding anything contained in the Indian Penal Code, 1860 or any other law for the time being in force, the maximum punishment for any offence shall not be more than imprisonment for life.

STATEMENT OF OBJECTS AND REASONS

Capital punishment is barbarous and inhuman which goes against the ethos of a modern civilized society. The savage act of capital punishment raises the moral question whether the State has the right to take away someone's life.

That is why the United Nations has decided to appeal to States all over the world to do away with capital punishment. Many nations around the world have already heeded the UN appeal.

Someone who has committed the most brutal and heinous crime should not be treated as a person to be done away with. A civilized society should have an attitude of compassion, sympathy and rectification towards these criminals. Even a hardened criminal would think and rethink when the society helps him to change and allows him to live and work with them. A life sentence is sufficient for a person to repent and change his ways to become a good citizen again. The attempt of a civilized State should be to provide enough opportunity for its citizens to realize the wrong he has done and to rectify himself to be a good man and a good citizen.

Hence this Bill.

NEW DELHI;
February 21, 2011.

PRADEEP TAMTA

BILL NO. 16 OF 2011

A Bill to provide for declaration and investigation of assets held by Government servants employed in certain departments and for matters connected therewith.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Government Servants (Declaration of Assets and Investigation) Act, 2011.

(2) It shall apply to Government servants holding posts or appointments under the Union Government or the Union territory Administration.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
application
and com-
mencement.

Definitions

2. In this Act, unless the context otherwise requires,—

(a) "assets" includes all properties, movable and immovable, legal or benami, held by the Government servants or by their dependants, within the country and/or abroad;

(b) "Authority" means the Government Servants Assets Investigation Authority constituted under section 3;

(c) "dependants" includes spouse, parents, sons and unmarried daughters;

(d) "Government servants" means persons employed in Government departments specified in the Schedule to this Act and holding any post or appointment under the Union Government or the Union territory Administration; and

(e) "prescribed" means prescribed by rules made under this Act.

Constitution
of the
Government
Servants
Assets
Investigation
Authority.

3. (1) There shall be constituted an authority to be called the Government Servants Assets Investigation Authority.

(2) The Authority shall consist of such number of members not exceeding ten, chosen from fields like finance, social welfare, education and other such fields, in such manner, as may be prescribed.

(3) The Chairperson of the Authority shall be a retired Judge of the Supreme Court or of a High Court and shall be appointed by the President.

Function of
Authority.

4. The Authority shall look into and investigate such cases of assets disproportionate to the known sources of income held by a Government servant, on its own or otherwise.

Declaration of
assets by
Government
servants.

5. (1) Every Government servant employed in Government Departments as specified in the Schedule shall, within a period of one month from the date of coming into force of this Act, declare the particulars of all the assets possessed by him and his dependants to the Authority, in such manner and form, as may be prescribed.

(2) Every Government servant shall, throughout the term of his office, submit annual return of the assets held or acquired by him and any of his dependants within one month of the beginning of the next financial year to the Authority.

Maintenance
of a Register
showing
returns filed
by
Government
servants.

6. The details of the return filed by the Government servant and of the declaration made by him under section 5 shall be maintained by the Authority in a Register to which any member of the general public shall have access.

Disciplinary
action.

7. The Government servants found to be having assets disproportionate to the known sources of their income shall be subject to such disciplinary action, as may be prescribed.

Provision for
inclusion of
other
departments
in the
Schedule.

8. The Central Government may, by order, add any other department of the Government to the Schedule to this Act.

Power to make
rules.

9. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:—

(i) the manner in which members of the Authority shall be appointed;

(ii) the form in which declaration of assets shall be furnished;

(iii) the manner in which the declaration shall be scrutinized;

(iv) the procedure to be followed by the Authority for investigation of assets of a Government servant;

(v) action to be taken in case declaration of assets furnished is false or investigation of assets leads to the fact that the Government servant has assets disproportionate to the known source of his income; and

(vi) any other matter that is necessary to carry out the provisions of this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the House agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[See sections 2(d), 5(1) and 8]

1. Department of Revenue-tax, Customs and Central Excise.
2. Department of Sales Tax.
3. Municipal Corporation.
4. Departments dealing with Public Utility Services like Water, Electricity, Civil Supplies, etc.
5. Department dealing with Housing.
6. Police.

STATEMENT OF OBJECTS AND REASONS

There has been a large scale corruption in certain departments of the Government dealing with Income-Tax, Customs and Central Excise, Housing, Water, Electricity, Law and Order as is evident from public outcry and reports in newspapers and electronic media. There are allegations that persons working in these departments despite having very meagre salary live in a very lavish style with all modern facilities. So far, there has been no initiative by the Government to look into the life style of these persons and take action against them. It is a common fact that an ordinary man has to run from pillar to post to get his work done if he does not bribe the persons concerned. Everyday, there are reports in the newspapers and electronic media about the deep rooted and wide spread corruption in these Departments. This is also highlighted by articles and letters published in newspapers. It is high time that the Government took initiative to look into the high level corruption in these Departments before the situation becomes explosive. The Bill seeks to achieve this purpose by providing a deterrent to the effect that assets of Government employees shall be subject to continuous scrutiny.

NEW DELHI;
February 21, 2011.

PRADEEP TAMTA

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of an authority to be known as the Government Servants Assets Investigation Authority by the Central Government. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees one crore per annum.

A non-recurring expenditure of about rupees five crore is also likely to be incurred.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

BILL NO. 23 OF 2011

A Bill to regulate the manner of the functioning and exercise of powers of Indian Intelligence Agencies within and beyond the territory of India and to provide for the coordination, control and oversight of such agencies.

Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. (1) This Act may be called the Intelligence Services (Powers and Regulation) Bill, 2011.

Short title,
extent,
application and
commence-
ment.

(2) This Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) This Act extends to the whole of India and applies to:—

- (a) all citizens of India, inside and outside India;
- (b) persons in the service of the Government wherever they may be; and
- (c) persons on ships and aircrafts registered in India wherever they may be.

Definitions.

2. In this Act, unless the context otherwise requires,—

(i) "Committee" means the National Intelligence and Security Oversight Committee established under section 12;

(ii) "Intelligence Bureau" means the Intelligence Bureau constituted under section 4;

(iii) "Indian territory" shall have the same meaning as is ascribed to the territory of India under article 1 of the Constitution;

(iv) "law enforcement agency" means and includes—

- (a) any Government department; and
- (b) any other person charged with the duty of investigating offences or charging offenders;

(v) "Member of the Tribunal" means the members appointed under section 24;

(vi) "National Technical Research Organisation" means the National Technical Research Organisation constituted under section 6;

(vii) "national security" includes the sovereignty, territorial integrity, economic stability and upholding of the Constitution;

(viii) "prescribed" means prescribed by rules made under this Act;

(ix) "Research and Analysis Wing" means the Research and Analysis Wing constituted under section 3;

(x) "threats to national security" includes:—

- (a) terrorist acts, including international terrorism;
- (b) espionage directed against the country or otherwise detrimental to the security of the country;
- (c) sabotage directed against the vital national infrastructure of the country or otherwise directed against the country;
- (d) organized crime directed against the country or otherwise detrimental to the security of the country;
- (e) drug, arms and human trafficking directed against the country or otherwise detrimental to the security of the country;
- (f) illegal international proliferation of weapons of mass destruction or the components thereof as well as materials and tools required for their production;
- (g) illegal trafficking of internationally controlled products and technologies; and
- (h) organized acts of violence or intimidation against ethnic or religious groups within the country;

(xi) "terrorist act" shall have the same meaning as ascribed to it in the Unlawful Activities (Prevention) Act, 1967; and

(xii) "Tribunal" means the National Investigation Tribunal established under section 23.

PART II

THE RESEARCH AND ANALYSIS WING

3. (1) There shall be constituted a Research and Analysis Wing (hereinafter referred to as the R&AW) which shall function under the control of the Prime Minister.

Research and
Analysis Wing.

(2) The functions of the R&AW shall be exercisable:—

(a) in the interests of National security, with particular reference to the defence, security strategic, economic and foreign policies of the Union of India; or

(b) in aid of the neutralization of threats from external sources.

(3) The day-to-day operation of the R&AW shall be vested in an officer not below the rank of a Secretary to the Government of India who shall be appointed by the Prime Minister and who shall hold office for a period of two years or till he attains the age of sixty-two years, whichever is later.

(4) It shall be the duty of the head of the R&AW to ensure that—

(a) no information is collected and used by the R&AW except what is necessary for discharge of its functions and that no information under their custody is disclosed by it except so far as necessary for the proper and efficacious conduct of functions assigned to it;

(b) the R&AW does not take any action that furthers the interests of any political party or coalition of political parties or other such interest groups; and

(c) there are appropriate arrangements for coordination with the IB, the NTRO, Central Para-Military Organisations and other law enforcement agencies for proper implementation of the mandate of this Act.

(5) The head of the R&AW shall submit a bi-annual report on the working of the R&AW, including of its accounts, to the Prime Minister and may, at any time, report to the Prime Minister on any matter relating to its work.

(6) The head of the R&AW shall not be eligible for reappointment to any post under the State except as an Advisor to the Government of India.

PART III

THE INTELLIGENCE BUREAU

4. (1) There shall be constituted an Intelligence Bureau (hereinafter referred to as the IB) which shall function under the control of the Prime Minister.

Intelligence
Bureau.

(2) It shall be the duty of the IB to work for national security in the context of internal conflict and, in particular, provide protection against threats from espionage, terrorist acts organized by other countries within the territory of India with the help of Indian nationals or residents and from actions intended to subvert the Constitution of India by violent means.

(3) It shall perform the following functions:—

(i) collection and management of intelligence within the country;

(ii) safeguarding the economic well-being of the Union of India against threats posed by the actions or intentions of any person whether Indian national or otherwise within the country; and

(iii) acting in aid to the Central and State police agencies including Para-Military Organisations and other law enforcement agencies.

Director of the
IB.

5. (1) The day-to-day control of the IB shall be vested in a Director who shall be appointed by the Prime Minister and shall hold office for a period of two years or till he attains the age of sixty-two years, whichever is earlier.

(2) It shall be the duty of the Director to ensure that—

(a) no information is collected and used by the IB except what is necessary for discharge of its functions and that no information under their custody is disclosed by it except so far as necessary for the proper and efficacious conduct of functions assigned to it;

(b) the IB does not take any action that furthers the interests of any political party or coalition of political parties or other such interest groups; and

(c) there are appropriate arrangements for coordination with the R&AW, the NTRO, Central Para-Military Organisations and other law enforcement agencies for proper implementation of the mandate of this Act.

(3) The Director shall submit a bi-annual report on the working of the IB, including of its accounts, to the Prime Minister and may, at any time, report to the Prime Minister on any matter relating to its work.

(4) The Director shall not be eligible for reappointment to any post under the State except as an Advisor to the Government of India.

PART IV

THE NATIONAL TECHNICAL RESEARCH ORGANISATION

National
Technical
Research
Organisation.

6. (1) There shall be constituted a National Technical Research Organisation (hereinafter referred to as the NTRO) which shall function under the control of the Prime Minister.

(2) It shall perform the following functions—

(a) to monitor and interfere with all forms of communications using such technical equipments as it may think fit within and beyond the territorial boundaries of India and also monitoring the uses of such equipments;

(b) to collate and provide information so collected in such form and to such agencies as may be prescribed; and

(c) to provide advice and assistance about—

(i) languages including technical terminology used for technical matters, and

(ii) cryptography and other matters relating to the protection of classified information and other such material,

to the armed forces of the Union of India, to the Central Government or to any other organisation which is determined for the purposes to this section in such manner as may be specified by the Prime Minister.

(3) The function referred to in sub-section (2)(a) above shall be exercisable only—

(a) in the interests of national security, with particular reference to the fields of defence, internal security and furtherance of foreign policy of the country; or

(b) in the interests of economic well-being of the country in relation to the actions or intentions of any person whether Indian national or otherwise, inside or outside the Indian territory; or

(c) in support of prevention, detection, interdiction or investigation of such crimes as may be assigned to it by the Prime Minister.

(4) In this Act, the expression "NTRO" refers to the National Technical Research Organisation and to any unit or part of a unit of the armed forces of the Union of India, which is for the time being, required by the Prime Minister to assist the NTRO in carrying out its functions.

7. (1) The day-to-day operation of the NTRO shall be vested in a Chairman who shall be appointed by the Prime Minister and who shall hold office for a period of two years or attaining the age of sixty-two years, whichever is earlier.

Chairman of
the NTRO.

(2) It shall be the duty of the Chairman to ensure that—

(a) no information is obtained by NTRO except when it is necessary for the discharge of its functions under the Act and that no information is disclosed to any person or agency except when it is necessary for discharge of its functions or for the purpose of any matter connected with ensuring the security, stability and sovereignty of the country;

(b) it does not take any action that furthers only the interests of any political party or similar interest group.

(3) The Chairman shall submit a bi-annual report on the working of the NTRO, including of its accounts, to the Prime Minister and may, at any time, report to the Prime Minister on any matter relating to its work.

(4) The Chairman shall not be eligible for reappointment to any post under the State except as an Advisor to the Government of India.

PART V

AUTHORISATION AND PROCEDURES

8. (1) No entry on any property or interference with any form of communication including wireless telegraphy under the Act shall be lawful unless it is authorised by a warrant issued by the authority designated for the purpose by the Central Government:

Authorisation
of certain
actions for the
R&AW, the IB
and the
NTRO.

Provided that the authority so designated shall not be an officer below the rank of a Secretary to the Government of India (hereinafter referred to as the Designated Authority).

(2) The Designated Authority may, on an application made by the IB or the R&AW or the NTRO, as the case may be, issue a warrant under this section authorising the taking of such action as is specified in the warrant in respect of any property or in respect of all forms of communication including wireless telegraphy, if the Designated Authority—

(a) deems it necessary for the action to be taken on the ground that it is likely to be of substantial value in assisting, as the case may be,—

(i) the R&AW in carrying out any of its functions under section 3; or

(ii) the IB in carrying out any of its functions under section 4; or

(iii) the NTRO in carrying out any function which falls within section 6;

(b) is satisfied that the objective cannot reasonably be achieved by any other means; and

(c) is satisfied that adequate arrangements are in force with respect to the disclosure of information obtained under this section and that any information obtained under the warrant shall be subject to those arrangements.

(3) A warrant authorising action for prevention or detection or interdiction of any terrorist act may also include action outside the country in such manner as may be prescribed.

(4) The IB may make an application under sub-section (2) for a warrant to be issued authorising the IB (or a person acting on its behalf) to take such action as is specified in the warrant on behalf of the R&AW or the NTRO and, where such a warrant is issued, the functions of IB shall include the carrying out of the action so specified, whether or not it would otherwise be within its functions :

Provided that no application shall be made for a warrant by virtue of sub-section (4) above except where the action proposed to be authorised by the warrant—

(a) is an action in respect of which the R&AW or the NTRO, as the case may be, could make such an application; or

(b) is to be taken otherwise than in support of preservation of national security.

Warrants,
procedure,
duration for
the R&AW,
the IB and
the NTRO.

9. (1) A warrant shall not be issued except—

(a) under the hand of the Designated Authority; or

(b) in an urgent case where the Prime Minister has expressly authorised its issue and a statement of that fact is endorsed on it, under the hand of the Director of IB or the Secretary of the R&AW or the Chairman of the NTRO, as the case may be.

(2) A warrant shall, unless renewed under sub-section (3), cease to have effect,—

(a) if the warrant had been issued under the hand of the Designated Authority, at the expiry of the period of three months from the date on which it was issued; and

(b) in any other case, at the expiry of the period ending with the second working day following the day on which it was issued.

(3) If, at any time before the day on which a warrant would cease to have effect, the Designated Authority considers it necessary for the warrant to continue to have effect for the purpose for which it was issued, he may, by an instrument, under his hand, renew it for a further period of three months beginning with the day it would otherwise have ceased to be effective.

(4) The Designated Authority may cancel a warrant if he is satisfied that the action authorised by it is no longer necessary.

Authorisation
of the acts
outside the
Indian
territory for
the R&AW
and the
NTRO.

10. (1) If, except in so far as provided for in this Part, a person is liable to the Union of India for any act done outside the Indian territory, he shall not be so liable if the act is one which is authorised to be done by virtue of an authorisation given by the Designated Authority under this section.

(2) the Designated Authority shall not give an authorisation under this section unless he is satisfied—

(a) that any act which may be done in reliance on the authorisation or, as the case may be, the operation in the course of which the acts may be done will be necessary for the proper discharge of a function of the R&AW and the NTRO, as the case may be; and

(b) that satisfactory arrangements are in force to ensure—

(i) that nothing is done in reliance on the authorisation beyond what is necessary for the proper discharge of a function of the R&AW or the NTRO, as the case may be;

(ii) that, in so far as any act may be done in reliance on the authorisation, their nature and likely consequences will be reasonable, having regard to the purposes for which they are carried out; and

(c) that satisfactory arrangements are in force with respect to the disclosure of information obtained by virtue of this section and that any information obtained by virtue of anything done in reliance on the authorisation will be subject to those arrangements.

(3) Without prejudice to the generality of the power of the Designated Authority to give an authorisation under this section, such an authorisation—

(a) may relate to a particular act or acts, of a description specified in the authorisation or to acts undertaken in the course of an operation so specified;

(b) may be limited to a particular person or persons of a description so specified; and

(c) may be subject to such conditions as may be specified.

(4) An authorization shall not be given under this section except—

(a) under the hand of the designated authority; or

(b) in an urgent case where the Prime Minister has expressly authorized its issue and a statement of that fact is endorsed on it, under the hand of the Director of IB or the head of the R&AW or the Chairman of the NTRO, as the case may be.

(5) An authorization shall, unless renewed under sub-section (6) below, cease to have effect—

(a) if the authorization was given under the hand of the Designated Authority, at the expiry of the period of three months from the date of its issue;

(b) in any other case, at the expiry of the period ending with the second working day following the day on which it was given.

(6) If, at any time before the day on which a warrant would cease to have effect, the Designated Authority considers it necessary for the authorization to continue to have effect for the purpose for which it was issued, he may, by an instrument, under his hand, renew it for a further period of three months beginning with the day it would otherwise have ceased to be effective.

(7) The Designated Authority shall cancel an authorization if he is satisfied that any act authorized by it is no longer necessary.

11. (1) Any information obtained by the R&AW, the IB and the NTRO without a specific warrant or authorization under section 9 or 10, shall not be used to take action against individuals to whom this information relates to. Unauthorised information.

(2) Such information obtained without specific warrant may only be used for the limited purpose of authorizing fresh warrants.

(3) The R&AW, the IB and the NTRO, as the case may be, shall apply for fresh warrants in accordance with section 9 and 10 herein within forty-eight hours of obtaining any such information in the event of any such information being relevant to the discharge of functions and duties of the R&AW, the IB and the NTRO, as applicable.

PART VI

THE NATIONAL INTELLIGENCE AND SECURITY OVERSIGHT COMMITTEE

12. (1) There shall be constituted a Committee, to be known as the National Intelligence and Security Oversight Committee (hereinafter referred to as the Committee) to examine the administration and compliance of policy laid down under this Act.

Establishment of National Intelligence and Security Oversight Committee.

(2) The Committee shall, unless it is necessary to perform the functions assigned to it under the Act, not go into the operational aspects and sources of intelligence of the functioning of the R&AW, the IB and the NTRO, as the case may be.

(3) The Committee shall consist of the following:—

(a) the Chairman of the Council of States, *Chairperson*;

(b) the Speaker of the House of the People, *Member*;

(c) the Prime Minister, *Member*;

(d) the Minister of Home Affairs, *Member*;

(e) the Leader of Opposition in the House of the People, *Member*;

(f) the Leader of Opposition in the Council of States, *Member*; and

(g) one member each from the House of the People and the Council of States to be nominated by the presiding officers of the respective Houses, as members.

(4) The Cabinet Secretary shall be the Secretary to the Committee, *ex-officio*.

(5) The Committee shall submit an annual report on their functioning to the Prime Minister and may at any time report to him on any matter relating to discharge of those functions.

(6) If it appears to the Prime Minister, after consultation with the Committee, that the publication of any matter in a report would be prejudicial to the discharge of the functions of the R&AW, the IB or the NTRO, the Prime Minister may exclude that matter from the annual report.

(7) The Prime Minister shall lay on the table of each House of Parliament a copy of each annual report submitted by the Committee under sub-section (5) together with a statement as to whether any matter has been excluded.

Tenure of
Office.

13. (1) Subject to the provisions of this section, a member of the Committee shall hold office for the duration of his membership of the House to which he has been elected.

(2) A member of the Committee shall vacate office—

(a) if he ceases to be the Speaker of the House of the People or a member of the House of the People;

(b) if he ceases to be the Chairperson of the Council of States or a member of the Council of States;

(c) if he ceases to be the Leader of Opposition in the Council of States or the House of the People;

(d) by resigning at any time through a notice to the Chairperson of the Committee.

Procedure.

14. (1) Subject to the provisions of this section, the Committee may determine their own procedure.

(2) If on any matter there is an equality of voting among the members of the Committee, the Chairperson shall have and exercise the casting vote.

(3) The Chairperson may appoint one of the members of the Committee to act, in his absence, as the Chairman at any meeting of the Committee, but the person acting as such shall not have a casting vote.

(4) The quorum for a sitting of the Committee shall be three.

Access to
information.

15. (1) If the Director of the IB or the head of the R&AW or the Chairman of the NTRO is asked by the Committee to disclose any information under their custody, then as to the whole or part of the information which is sought, he shall either—

(a) arrange for it to be made available to the Committee subject to and in accordance with arrangements approved by the Cabinet Secretary; or

(b) inform the Committee that it cannot be disclosed because—

(i) it is sensitive information which, in his opinion, may not be made available; or

(ii) the Prime Minister has certified that it should not be disclosed.

(2) The fact that any particular information is sensitive shall not prevent its disclosure, if the Director, IB or the head of the R&AW or the Chairman, NTRO, as the case may be, consider it safe to disclose.

(3) Any information which has not been disclosed to the Committee on the ground that it is a sensitive information, shall be disclosed to them if the Cabinet Secretary certifies in the prescribed manner that it is fit to be disclosed in public interest.

(4) The disclosure of information to the Committee in accordance with the provisions of this section shall be regarded for the purposes of this Act as necessary for the proper discharge of the functions of the R&AW, the IB and the NTRO.

Explanation. In this section the expression 'sensitive information' shall include—

(a) an information which might lead to the identification of, or provide details of the sources of information or operational methods used by the R&AW, the IB and the NTRO;

(b) information about specific operations which have been, are being or are proposed to be undertaken in pursuance of any of the functions of those bodies; and

(c) information provided by the Government or an agency of any other country which does not consent to the disclosure of the information.

PART VII

INTELLIGENCE OMBUDSMAN

16. (1) The Central Government shall, in consultation with the National Intelligence and Security Oversight Committee, appoint an Intelligence Ombudsman (hereinafter referred to as the "Ombudsman") from amongst persons having special knowledge in the field of intelligence to address the grievance of the members of staff and officers of the R&AW, the IB and the NTRO:

Intelligence
Ombudsman.

Provided that no person shall be appointed as an Ombudsman who has served as the head of the R&AW; the Director, IB or the Chairman, NTRO.

(2) The administrative control of the Ombudsman shall be vested in the Cabinet Secretary.

(3) The Ombudsman shall be appointed for a tenure of three years from the date of his appointment or till he attains the age of sixty-eight years, whichever is earlier.

(4) The Ombudsman shall perform the following functions:—

(i) resolve grievances of members of staff or officers of the R&AW, the IB and the NTRO, as the case may be;

(ii) suggest changes in the administrative practices of the R&AW, the IB and the NTRO, as the case may be, to mitigate the problems of the members of staff or officers of the R&AW, the IB and the NTRO, as the case may be.

(5) Not later than thirty-first day of March of each calendar year, the Ombudsman shall prepare and submit a report of its functioning to the Prime Minister.

(6) Without prejudice to the generality of the foregoing provision, the report shall contain—

(a) the recommendations of the Ombudsman for improving functioning of the R&AW, the IB and the NTRO;

(b) a summary of the problems of the members of staff or officers with the R&AW, the IB and the NTRO, as the case may be, including a description of the nature of such problems;

(c) a summary of,—

(i) action taken in matters enumerated in clauses (a) and (b);

(ii) the result of such action;

(iii) the matters where no action was taken and the period for which the matter has been pending;

(iv) the reasons why no action was taken alongwith the persons responsible for such non-action;

(v) the recommendations with a view to solve the problems of the members of the R&AW, the IB and the NTRO; and

(d) such other information as the Ombudsman may deem necessary.

(7) The Ombudsman may consult the heads of the R&AW, the IB and the NTRO, as the case may be, in carrying out the Ombudsman's responsibilities under this section.

Procedure.

17. (1) The orders of the Ombudsman in relation to any complaint by a member of staff or officer of the R&AW, the IB and the NTRO, as the case may be, shall be implemented by the Government in such manner as it may specify.

(2) It shall be the duty of every member of the R&AW, the IB or the NTRO to disclose or to give to the Ombudsman such documents or information as may be required for the purpose of enabling him to carry out his functions under this Act.

(3) The Ombudsman shall carry out his functions in such a way as to ensure that no document or information disclosed or given to him by any person is disclosed without the consent of such person to any complainant or to any person holding office under the Union of India or to any other person; and accordingly the Ombudsman shall not, except in its reports under sub-section (1) of section 22, give any reasons for a determination notified by them to a complainant.

(4) Subject to sub-section (3), the Ombudsman may determine his own procedure.

Complaints to the Ombudsman.

18. Any complaint by a member or ex-member of the IB, the R&AW or the NTRO, as the case may be, in relation to his service and, unless the Ombudsman consider that the complaint is frivolous, vexatious or without any valid basis, shall be dealt with accordance with this Part.

References and investigations by the Ombudsman.

19. (1) After the submission of the complaint, if the Ombudsman is *prima facie* satisfied, a copy of such complaint shall be forwarded to the persons heading the IB, the R&AW and the NTRO, as the case may be, for their reply and comments on the allegations or grievances reported in the application by the complainant.

(2) The R&AW, the IB and the NTRO shall submit their replies or comments, as the case may be, within three weeks of receipt of the complaint from the Ombudsman.

(3) The Ombudsman shall give its decision within forty-five days of the receipt of the complaint.

Disposal of the complaints.

20. Where the Ombudsman determines that the R&AW, the IB and the NTRO, as the case may be, did not have reasonable grounds for their actions or inactions, they shall—

(a) give notice to the complainant that they have made a determination in his favour; and

(b) send a recommendation of their findings to the persons heading the R&AW, the IB and the NTRO, as the case may be.

Remedies.

21. Where the Ombudsman passes a finding or an order, the Ombudsman may do all or any of the following, namely,—

(a) direct that any action by which the complainant is so aggrieved be reversed or if the act cannot be reversed, give such relief including compensation to the complainant as it may determine;

(b) direct the persons heading the R&AW, the IB or the NTRO, as the case may be, to pay to the complainant such sums by way of compensation as may be specified by the Ombudsman.

22. The Director of IB or the head of the R&AW or the Chairman of the NTRO, as the case may be, shall establish procedures, requiring a formal response to all complaints received from the Ombudsman and comply with the findings, orders or recommendations of the Ombudsman within three weeks of the receipt of the order of the Ombudsman.

R&AW, the IB and NTRO to comply with the orders of the Ombudsman.

PART VIII

NATIONAL INTELLIGENCE TRIBUNAL

23. The Central Government shall, by notification in the Official Gazette, establish a tribunal to be known as the National Intelligence Tribunal (hereinafter referred to as the Tribunal), for the purpose of investigating complaints against the R&AW, the IB or the NTRO.

National Intelligence Tribunal.

24. The Tribunal shall consist of:—

Constitution of the Tribunal.

(i) a Chairperson who shall be a sitting or a retired judge of the Supreme Court, to be appointed by the Central Government in consultation with the Chief Justice of the Supreme Court;

(ii) one member who is or has been a judge of the High Court to be appointed by the Central Government in consultation with the Chief Justice of the High Court concerned; and

(iii) one member who shall be appointed from amongst persons who have been the head of the IB or the R&AW, to be appointed from the two services alternately.

25. The Chairperson or members of the Tribunal shall hold office for a term of five years from the date on which they enter upon office and shall not be eligible for reappointment.

Term of Office.

26. (1) The Chairperson or a member of the Tribunal may, by notice in writing under his hand, addressed to the President, resign his office:

Resignation and removal.

Provided that the Chairperson or a member shall, unless permitted by the President to relinquish office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his terms of office, whichever is earlier.

(2) The Chairperson or a member other than a sitting Judge of the Supreme Court or a High Court, as the case may be, of the Tribunal shall not be removed from office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a sitting Judge of the Supreme Court in which such Chairperson or other member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules to be prescribed, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or other members referred to in sub-section (2).

27. (1) The Chairperson shall have the power to review the exercise by the State of its powers of issuing authorizations or warrants under sections 8, 9, 10 and 11 of this Act.

Functions of the Chairperson.

(2) The Tribunal shall submit a bi-annual report on their functioning to the Prime Minister.

(3) The Prime Minister shall cause to lay before each House of Parliament a copy of each bi-annual report submitted by the Committee under sub-section (2) together with a statement as to whether any matter has been excluded from that report in pursuance of sub-section (4).

(4) If it appears to the Prime Minister, after consultation with the Chairman of the Tribunal, that the publication of any matter in a report would be prejudicial to the discharge of the functions of the R&AW, the IB or the NTRO, as the case may be, he may exclude that matter from the bi-annual report laid before each House of Parliament.

(5) The Prime Minister may, in consultation with the Chairperson provide the Tribunal with such staff and infrastructure facilities as the Chairperson thinks necessary for the discharge of his functions.

Salaries and expenses.

28. The Chairperson and members shall hold office in accordance with the terms of their appointment and they shall be paid such salary and allowances equivalent to their last drawn salary and allowances.

Financial and Administrative Powers of the Chairperson.

29. The Chairperson shall exercise such financial and administrative powers over the Tribunal as may be prescribed:

Provided that the Chairperson shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other member or any officer of the Tribunal, subject to the conditions that such member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

Staff of the Tribunal.

30. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and provide the tribunal with such officer and other employees as it may think fit.

(2) The salaries and allowances payable to, and the other terms and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed.

(3) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Chairperson.

Jurisdiction, powers and authority of the Tribunal.

31. (1) It shall be the duty of the Government or any of its agencies to implement the orders of the tribunal.

(2) It shall be the duty of the R&AW, the IB or the NTRO to disclose or give to the Tribunal such documents or information as it may require for the purpose of carrying out its functions under this Act.

(3) The Tribunal shall carry out its functions under this Act in such a way as to ensure that no document, or information disclosed or given to the Tribunal by any person is disclosed without the consent of such person to the complainant or to any person holding office under the Union of India or to any other person; and accordingly the Tribunal may not give any reason for their decision notified to a complainant.

(4) Subject to sub-section (3) the Tribunal may determine its own procedure.

(5) For the purpose of investigating and adjudicating a complaint under this Act, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

1 of 1872.

- (e) issuing commissions for the examination of witnesses or documents; and
- (f) reviewing its decisions.

(6) The Tribunal shall have the power to decide both questions of interpretation of provisions of this Act and facts that may be raised before it.

32. (1) Any person may complain to the Tribunal if he is aggrieved by anything which he believes the R&AW or the IB or the NTRO, as the case may be, has wrongfully done in relation to him or to his property. Investigation of complaints.

(2) On receipt of a complaint by any person aggrieved by the actions of the R&AW or the IB or the NTRO, as the case may be, if the Tribunal, after such inquiry, as it may deem necessary, is satisfied that it is fit for adjudication by it, admit such complaint; but where the Tribunal is not satisfied, it may dismiss the application after recording its reasons in writing.

(3) In so far as the complaint alleges that anything has been done wrongfully in relation to any property of the complainant, the Tribunal shall investigate—

(a) whether the R&AW or the IB or the NTRO, as the case may be, had obtained or provided information or performed any other tasks in relation to the submissions of the complainant; and

(b) if so, whether the R&AW or the IB or the NTRO, as the case may be, had reasonable grounds for taking that action.

(4) If, in the course of the investigation of a complaint by the Tribunal, if the Tribunal consider it necessary to establish whether a warrant and/or an authorization was issued/given to the R&AW or the IB or the NTRO, as the case may be, under sections 9 and/or 11 of this Act for the commission of any act, it shall refer so much of the complaint as relates to the doing of that act to the Designated Authority for validation of the actions.

(5) If the Tribunals hold that a valid warrant was issued or a valid authorization was given, it shall determine whether the Designated Authority was acting properly in issuing or renewing the warrant or, as the case may be, in giving or renewing the authorization.

(6) The Tribunal shall make a determination within forty-five days of the receipt of the complaint.

45 of 1860.

2 of 1974.

(7) All proceedings before the Tribunal shall be deemed to be judicial proceedings for the purposes of sections 193, 219, 228 and 196 of the Indian Penal Code, 1860 and the Tribunal shall be deemed to be a court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(8) The decision of the Tribunal shall be taken by majority and it shall be binding on all parties.

33. (1) A person making a complaint to the Tribunal may either appear in person or take the assistance of a legal practitioner before the tribunal. Assistance of legal practitioner.

(2) The Central Government or the competent authority, as may be prescribed, may authorize one or more legal practitioners or any of its law officers to act as counsel and every person so authorized by it may present its case with respect to any complaint before the Tribunal.

34. Where the Tribunal determines under section 32 that the R&AW or the IB or the NTRO, as the case may be, did not have reasonable grounds for its actions or inactions, the Tribunal may, by an order, direct— Relief, compensation and restitution.

(a) that the obtaining and providing of information in relation to the complainant or, as the case may be, the conduct of other activities in relation to him or to any property of his shall cease and that any records relating to such information so obtained or provided shall be destroyed in such manner as to render them unusable henceforth and such activities shall be stopped forthwith;

(b) payment of compensation to the person who has been aggrieved by the actions of the R&AW or the IB or the NTRO, as the case may be;

(c) restitution of property damaged by such actions;

(d) quashing of any warrant or authorization which the Tribunal has found to have been improperly issued, renewed or given;

(e) institution of proceedings under the relevant statutes and applicable laws against the persons responsible for that.

Appeal.

35. Any person, aggrieved by an order made by the National Intelligence Tribunal, may prefer an appeal to the Supreme Court within a period of ninety days from the date of such order.

Power to
make rules.

36. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Intelligence agencies are responsible for maintaining internal security and combating external threats to the sovereignty and integrity of the nation. These responsibilities range from counter-terrorism measures tackling separatist movements to critical infrastructure protection. These agencies are operating without an appropriate statutory basis delineating their functioning and operations. This tends to, among other things, compromise operational efficiency and weakens the professional fabric of these agencies. It also results in intelligence officers not having due protection when performing their duties.

Assessments and gathering of information by intelligence agencies are catalysts for law enforcement units to act, necessitating that these be reliable, accurate and in accordance with law. This kind of efficiency has been hindered by obscured responsibilities that have plagued the functioning of the agencies.

Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to the procedure established by law. The Supreme Court of India has carved a right to privacy from the right to life and personal liberty. Such rights to privacy are compromised when agencies undertake surveillance operations. In *Re: Peoples Union of Civil Liberties vs. Union of India*, the Supreme Court issued detailed guidelines regarding telephone tapping. A proper legal framework is required to regulate surveillance of other forms, using different technologies, as well. There is an urgent need to balance the demands of security and privacy of individuals, by ensuring safeguards against the misuse of surveillance powers of intelligence agencies. Therefore, legislation is imperative to regulate the possible infringement of privacy of citizens, while giving credence to security concerns.

In view of the reasons stated, the Bill seeks to enact a legislation pursuant to Entry 8 of List I of the Seventh Schedule of the Constitution of India to provide:—

- (a) A legislative and regulatory framework for the Intelligence Bureau, the Research and Analysis Wing and the National Technical Research Organisation;
- (b) Designated Authority regarding authorization procedure and system of warrants for operations by these agencies;
- (c) A National Intelligence Tribunal for the investigation of complaints against these agencies;
- (d) A National Intelligence and Security Oversight Committee for an effective oversight mechanism of these agencies; and
- (e) An Intelligence Ombudsman for efficient functioning of the agencies and for matters connected therewith.

The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;
March 4, 2011

MANISH TEWARI

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of a Research and Analysis Wing under the control of the Prime Minister. Clause 4 provides for the establishment of an Intelligence Bureau under the control of the Prime Minister. Clause 5 provides for appointment of a Director for day-to-day operation of the IB. Clause 6 provides for the establishment of a National Technical Research Organisation under the control of the Prime Minister. Clause 7 provides for appointment of a Chairman in whom shall be vested the day-to-day operations of the NTRO. Clause 12 provides for the constitution of a National Intelligence and Security Oversight Committee to examine and administer and ensure compliance of the policies laid down under the Act. Clause 16 provides that an Intelligence Ombudsman shall be appointed by the Central Government. Clause 21 provides for remedies including compensation to the persons aggrieved by the actions of the intelligence agencies. Clause 23 provides that a National Intelligence Tribunal shall be established by the Central Government. Clause 24 provides for the appointment of the Chairperson and members of the Tribunal. Clause 28 provides for salaries and other expenses of the chairperson and members of the Tribunal. Clause 30 provides for the staff for the effective functioning of the Tribunal. Clause 34 provides for the payment of compensation to the persons who have suffered loss by any action of the R&AW or the IB or the NTRO.

The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees ten thousand crore will be involved as recurring expenditure per annum.

A non-recurring expenditure to the tune of rupees five hundred crore is also likely to be incurred from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 36 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

BILL NO. 21 OF 2011

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 2011. Short title.
2. After article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely:— Amendment of article 15.

“(6) Any special provision referred to in clause (5) for reservation of seats in educational institutions for socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes made by any law by the State shall ensure that the quota of seats for socially and educationally backward classes and for the Scheduled Castes and Scheduled Tribes is, as far as possible, in accordance with their percentage to the total population in its jurisdiction.”.

Amendment
of article 16.

3. In article 16 of the Constitution, after clause (4B), the following clause shall be inserted, namely:—

“(4C) Nothing in this article shall prevent the State from making any provision for reservation in excess of fifty per cent. of total number of posts, by law, in appointments or promotions to any class or classes of posts, in services under State in favour of any socially and educationally backward class of citizens or for the Scheduled Castes or the Scheduled Tribes, if the population of the socially and educationally backward classes and the Scheduled Castes and the Scheduled Tribes exceeds fifty per cent. of the total population in its jurisdiction.”

STATEMENT OF OBJECTS AND REASONS

Affirmative action by the State for advancement of marginalized and deprived sections of the society is an ineluctable social necessity. Empirical and research studies conducted have invariably concluded that affirmative action programmes are beneficial to the under privileged persons. Despite enactment of several laws by the Union and State Governments and constitutional provisions, social and economic upliftment of weaker sections of the society continues to be a far cry.

After the judgement of the Apex Court in *Indira Sawhney V Union of India* (AIR 1993 SC 477), several High Courts in different States have struck down legislative measures, intended to improve the condition of the deprived sections of society, on the ground of violating the basic structure of the Constitution. As a matter of fact, no judicial ruling has so far clearly defined and demarcated "the basic structure of the Constitution."

In many States, the population of the Scheduled Castes and the Scheduled Tribes and Other Backward Classes are in majority and therefore, the ceiling of fifty per cent. (Quantitative limitation) on reservation should be done away with. For example, in the State of Tamil Nadu, reservation to the extent of sixty-nine per cent. has been provided to the persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes and it requires constitutional protection.

Unless sufficient safeguards are provided in the Constitution, any affirmative action by the State towards improving the conditions of socially and educationally backward classes of citizens including the Scheduled Castes and the Scheduled Tribes in the fields of education and employment will be set at naught by judicial intervention. It is, therefore, proposed to amend the Constitution with a view to enable the State to provide reservation in excess of fifty per cent. of total number of seats and posts in favour of persons belonging to the Other Backward Classes including the Scheduled Castes and the Scheduled Tribes in the matters of admission in educational institutions and in posts and services under the States for their progressive advancement.

Hence, this Bill.

NEW DELHI;
February 15, 2011.

S. SEMMALAI

BILL NO. 20 OF 2011

A Bill further to amend the Indian Penal Code, 1860.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

Short title,
and com-
mencement.

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2011.
- (2) It shall come into force at once.

Insertion of
new section
302A.
Punishment
for causing
death of rape
victim.

2. After section 302 of the Indian Penal Code, 1860 (hereinafter to be referred to as the Code), the following new section shall be inserted, namely:—

"302A. Whoever causes death of a person after committing rape on such person shall be punished with death."

Insertion of
new section
364B.
Punishment
for kidnapping
and causing
death.

3. After section 364A of the Code, the following section shall be inserted, namely:—

"364B. Whoever kidnaps or abducts any person and causes death of such person due to any reason shall be punished with death."

STATEMENT OF OBJECTS AND REASONS

In many parts of the country, cases of sexual assault and other offences against women are on the rise. A member of Indian Railways Women Kabaddi Team was shot dead by a CRPF trooper. A dalit girl was maimed in Uttar Pradesh for resisting rape. Another girl in the same State was raped by none other than a legislator. Recently, a woman in Kerala was thrown out of the moving train. She did not survive the attack. In Kolkata, a teenage girl was pushed off the roof after she was raped.

In the first-half of February 2011, as many as twenty-seven cases of rape and attempts to rape have been reported. In twelve of these cases, the victims were killed.

Similarly, there has been an alarming increase recently in cases of men, women and especially, children being kidnapped and subsequently being killed.

Therefore, it is high time that a stringent law, which may act as a deterrent for such perverted acts of violence is brought forward by amending the Indian Penal Code, 1860.

NEW DELHI;
March 4, 2011.

SUSHMA SWARAJ

BILL NO. 34 OF 2011

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Amendment) Act, 2011.

Insertion of
new article
16A.

2. After article 16 of the Constitution, the following article shall be inserted, namely:—

Reservation for
economically
weaker section
of the society
in posts and
services.

"16A. (1) Notwithstanding anything contained in this Part, the State may make provision for reservation in favour of persons belonging to economically weaker section of the society in the posts and services under the State:

Provided that the percentage of reservation shall not exceed fifteen per cent.

(2) The provisions of clause (1) shall have effect notwithstanding anything contained in any judgement or decree or direction or order of any Court of Law or Tribunal or Authority having judicial powers to the contrary.

Explanation: For the purpose of this article,—

"persons belonging to economically weaker section of the society" means persons whose income from all sources is below rupees sixty thousand per annum but shall not include persons belonging to the Scheduled Castes, the Scheduled Tribes and other socially and educationally backward classes."

3. After article 29 of the Constitution, the following article shall be inserted, namely:—

Insertion of
new article
29A.

"29A. (1) Notwithstanding anything contained in this Part, the State may make provision for reservation in favour of persons belonging to economically weaker section of the society in all educational institutions under the State:

Reservation for
economically
weaker section
of the society
in all
educational
institutions.

Provided that the percentage of reservation shall not exceed fifteen per cent.

(2) The provisions of clause (1) shall have effect notwithstanding anything contained in any judgement or decree or direction or order of any Court of Law or Tribunal or Authority having judicial powers to the contrary.

Explanation:— For the purpose of this article,—

"Persons belonging to economically weaker section of the society" means persons whose income from all sources is below rupees sixty thousand per annum but shall not include persons belonging to the Scheduled Castes, the Scheduled Tribes and other socially and educationally backward classes."

STATEMENT OF OBJECTS AND REASONS

The people belonging to the economically weaker Sections are not getting benefit of any reservation scheme. The poor amongst them are becoming poorer day by day. They cannot compete with others. It is, therefore, necessary to provide reservation in favour of those economically weaker sections of the society in posts and services and in all educational institutions under the State.

The Bill seeks to amend the Constitution with a view to making reservation for economically weaker section of the society without affecting the rights of the Scheduled Castes, the Scheduled Tribes and Other Backward Classes.

Hence this Bill.

NEW DELHI;
March 24, 2011.

NISHIKANT DUBEY

T.K. VISWANATHAN,
Secretary-General.